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7       UNITED STATES DISTRICT COURT  
8                   EASTERN DISTRICT OF CALIFORNIA  
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10      JOEL SWANBOM, et al.,

Case No. 1:24 -cv-00171-KES-SAB

11      Plaintiffs,

ORDER ADOPTING IN FULL AMENDED  
FINDINGS AND RECOMMENDATIONS  
AND GRANTING DEFENDANT  
TRAVELERS COMMERCIAL  
INSURANCE COMPANY'S MOTION TO  
DISMISS WITH LEAVE TO AMEND

12      v.

13      TRAVELERS COMMERCIAL  
14      INSURANCE COMPANY,

15      Defendant.

Docs. 11, 17, 18

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17      On April 3, 2024, Travelers Commercial Insurance Company's ("defendant" or  
18      "Travelers") moved to dismiss Joel and Katie Swanbom's ("plaintiffs") complaint with prejudice  
19      for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Doc. 11.

20      This action arises out of an insurance policy dispute connected to the sale of a home.

21      Plaintiffs held two Travelers homeowners insurance policies that included liability coverage.

22      Doc. 1 ¶ 1. On or about January 27, 2018, plaintiffs sold their single-family home to a third party  
23      buyer. *Id.* ¶ 10. At some point after the sale, the buyer notified plaintiffs of certain damages the  
24      buyer allegedly suffered regarding the property and contended that plaintiffs had failed to disclose  
25      various defects in connection with the sale. *See* Doc. 1. Plaintiffs tendered the claim to  
26      defendant. *Id.* ¶ 36. Thereafter, the buyer filed a complaint against plaintiffs in state court on  
27      July 16, 2020. Doc. 11-2, Ex. A ("state complaint"). The state complaint, which was  
28      subsequently amended, asserted the following causes of action: (1) fraudulent inducement to enter

1 contract; (2) fraudulent concealment; (3) negligence; (4) breach of written contract for sale of  
2 property; (5) violation of Civil Code § 1102, et seq.; and (6) aiding and abetting. Doc. 11-2 at 2.  
3 Travelers denied plaintiffs' tendered claim, refusing to defend or indemnify them in the  
4 underlying lawsuit. Doc. 1 ¶¶ 20, 22, 24. Plaintiffs and the buyer eventually settled the case. *Id.*  
5 ¶ 23. After that settlement, Travelers notified plaintiffs that it would not reimburse plaintiffs for  
6 either the settlement or the costs plaintiffs incurred to defend against the buyer's suit. *Id.* ¶ 24.

7 Plaintiffs filed the present action against Travelers on February 6, 2024, alleging breach of  
8 contract and breach of the covenant of good faith and fair dealing. Doc. 1. Travelers' motion to  
9 dismiss was referred to the assigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and  
10 Local Rule 302. Docs. 11, 12. The magistrate judge issued findings and recommendations  
11 recommending that the motion be granted with leave to amend. Docs. 17, 18. The findings and  
12 recommendations were served on the parties and contained notice that any objections were to be  
13 filed within fourteen (14) days of the date of service. Doc. 18. On June 20, 2024, plaintiffs  
14 timely filed objections. Doc. 19.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a de  
16 novo review of this case. Having carefully reviewed the file, the Court adopts the findings and  
17 recommendations in full, concluding that they are supported by the record and by proper analysis.  
18 The magistrate judge correctly concluded in the findings and recommendations that the  
19 fundamental nature of the transaction between the buyer and plaintiffs was economic and that the  
20 buyer's claims were for economic losses flowing from plaintiffs' failure to disclose material  
21 defects in connection with the sale of the property. Doc. 18. The findings and recommendations  
22 appropriately found that plaintiff failed to state a claim against Travelers for breach of contract or  
23 for breach of a duty to defend plaintiffs in the buyer's state action. *Id.*

24 In their objections to the findings and recommendations, plaintiffs essentially reiterate  
25 arguments they previously made in opposition to Travelers' motion to dismiss. Plaintiffs  
26 principally argue that the magistrate judge should have denied the motion to dismiss because the  
27 buyer's state complaint contained sufficient allegations that plaintiffs' negligent conduct caused  
28 property damage and loss of use for the buyer. *See generally* Doc. 19. For example, plaintiffs

1 claim in their objections that while they “may have intentionally made the alteration, for example,  
2 to the pool equipment, . . . the defects in their alleged negligent modifications were unknown to  
3 them and accidentally caused damage to other physical property.” *Id.* at 19. Plaintiffs further  
4 contend that they need only show the “bare possibility” of coverage. *Id.* at 15.

5 Plaintiffs rely heavily on the limited allegations in the state complaint that plaintiffs’  
6 conduct may have caused future property harm or loss of use, for example, that “[t]he pool  
7 equipment was not in good operating condition in view of defective and improperly maintained  
8 pump, filter, and heater system and Swambom’s own negligent maintenance thereof.” Doc. 11-2  
9 at 8–9, ¶¶ 18(b), (h). Plaintiffs object that “[i]t was certainly foreseeable that if Plaintiffs  
10 negligently made changes to the pool equipment, for example, that it could cause physical  
11 damage to someone else’s property if they ever sold the property—which in fact they did.”  
12 Doc. 19 at 16. But even assuming, as plaintiffs contend, that they had a broad duty to take care in  
13 the maintenance of their property while they owned it, the buyer’s claims were based on  
14 plaintiffs’ *failure to disclose* material conditions of the property in the context of the real estate  
15 transaction. The state complaint is based on the buyer’s allegations that plaintiffs misrepresented  
16 the state of the property at the time of the sale. Even assuming, as plaintiffs contend, that they  
17 had a broad duty to take care in the maintenance of their property while they owned it, there is no  
18 indication plaintiffs were liable to the buyer for any negligent maintenance of the pool or property  
19 while plaintiffs owned it, absent plaintiffs’ sale contract with the buyer and their contractual duty  
20 to disclose material defects to the buyer in connection with the sale.

21 The magistrate judge thus correctly found that the loss of use and property damage  
22 allegations in the underlying complaint were asserted in the context of plaintiffs’ failure to  
23 accurately disclose the condition of the property. Doc. 18 at 20–21. Similarly, the buyer’s  
24 negligence claim against plaintiffs in the state complaint is framed in terms of negligent failure to  
25 disclose: “At the time [plaintiffs] made the above-alleged Representations, they had no reasonable  
26 ground for believing the Representations to be true,” and “[a]t the time [plaintiffs] failed to  
27 disclose the true conditions at, and the true facts concerning, the Property, they had no reasonable  
28 ground for believing their disclosures to be true, complete, and not misleading.” Doc. 11-2 at 10,

1 ¶ 23–24. Plaintiffs’ remaining objections similarly do not undermine the magistrate judge’s  
2 analysis.

3 As found by the magistrate judge, there is no possibility of coverage on the facts as  
4 currently pleaded in the complaint. “[I]n evaluating whether or not an insurance company has a  
5 duty to defend a particular lawsuit, California courts have consistently analyzed the nature of the  
6 transactions between the parties to the lawsuit. In this regard, when the fundamental nature of  
7 those transactions is economic, California courts have refused to find a duty to defend the lawsuit  
8 even though the litigation will encompass issues relating to property damage.” *Cont'l Casualty*  
9 *Co. v. Superior Court*, 111 Cal. Rptr. 2d 849 (Cal. Ct. App. 2001). Applying that principle here,  
10 while “the defective condition of the property is an element of [the buyer’s] claims, the defects  
11 cannot, even when interpreting the policy broadly, be considered the *cause* of [the buyer’s]  
12 damages.” *Safeco Ins. Co. of Am. v. Andrews*, 915 F.2d 500, 502 (9th Cir. 1990). The  
13 magistrate judge correctly concluded that the gravamen of the buyer’s state complaint was  
14 economic harm and that the alleged cause of the buyer’s damages was plaintiffs’ failure to  
15 disclose defects on the property. *See* Doc. 18 at 27.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. Defendant Travelers Commercial Insurance Company’s motion to dismiss  
18 (Doc. 11) for failure to state a claim, filed April 3, 2024, is GRANTED WITH  
19 LEAVE TO AMEND; and  
20 2. Plaintiffs shall file any amended complaint within twenty-one (21) days of the date  
21 of entry of this order.

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24 IT IS SO ORDERED.

25 Dated: June 6, 2025



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28 UNITED STATES DISTRICT JUDGE